

SENATE BILL No. 494

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3-3.

Synopsis: Reimbursement for expenses of injured employees. Requires an employer to pay for reasonable expenses of travel for treatment of an injured employee regardless of where the treatment is located. Requires an employer to reimburse the injured employee for loss of wages using the basis of the employee's average daily wage when treatment or travel to or from the treatment causes a loss of working time to the employee. Computes mileage reimbursement for examination or treatment of an injured employee from the location of the employer to the treatment or the examination, or from the home of the employee to the treatment or the examination, whichever is less.

Effective: July 1, 1999.

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January 19, 1999, read first time and referred to Committee on Pensions and Labor.



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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 494

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-3-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) After an injury and prior to
3 an adjudication of permanent impairment, the employer shall furnish
4 or cause to be furnished, free of charge to the employee, an attending
5 physician for the treatment of his injuries, and in addition thereto such
6 surgical, hospital and nursing services and supplies as the attending
7 physician or the worker's compensation board may deem necessary. If
8 the employee is requested or required by the employer to submit to
9 treatment, ~~outside the county of employment~~ the employer shall also
10 pay the reasonable expense of travel **by the most convenient means**
11 **to and from the place of the treatment**, food, and lodging necessary
12 during the travel. ~~but~~ **If the travel is by automobile, the mileage paid**
13 **to the employee may not to exceed** the amount paid at the time of the
14 travel by the state to its employees under the state travel policies and
15 procedures established by the department of administration and
16 approved by the state budget agency. **Mileage shall be computed**
17 **from the location of the employer to the place of treatment or from**

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1 the home of the employee to the place of treatment, whichever is
 2 less. If the treatment or travel to or from the place of treatment
 3 causes a loss of working time to the employee, the employer shall
 4 reimburse the employee for the loss of wages using the basis of the
 5 employee's average daily wage.

6 (b) During the period of temporary total disability resulting from the
 7 injury, the employer shall furnish the physician services and supplies,
 8 and the worker's compensation board may, on proper application of
 9 either party, require that treatment by the physician and services and
 10 supplies be furnished by or on behalf of the employer as the worker's
 11 compensation board may deem reasonably necessary.

12 (c) After an employee's injury has been adjudicated by agreement
 13 or award on the basis of permanent partial impairment and within the
 14 statutory period for review in such case as provided in section 27 of
 15 this chapter, the employer may continue to furnish a physician or
 16 surgeon and other medical services and supplies, and the worker's
 17 compensation board may within the statutory period for review as
 18 provided in section 27 of this chapter, on a proper application of either
 19 party, require that treatment by that physician and other medical
 20 services and supplies be furnished by and on behalf of the employer as
 21 the worker's compensation board may deem necessary to limit or
 22 reduce the amount and extent of the employee's impairment. The
 23 refusal of the employee to accept such services and supplies, when
 24 provided by or on behalf of the employer, shall bar the employee from
 25 all compensation otherwise payable during the period of the refusal,
 26 and his right to prosecute any proceeding under IC 22-3-2 through
 27 IC 22-3-6 shall be suspended and abated until the employee's refusal
 28 ceases. The employee must be served with a notice setting forth the
 29 consequences of the refusal under this section. The notice must be in
 30 a form prescribed by the worker's compensation board. No
 31 compensation for permanent total impairment, permanent partial
 32 impairment, permanent disfigurement, or death shall be paid or payable
 33 for that part or portion of the impairment, disfigurement, or death
 34 which is the result of the failure of the employee to accept the
 35 treatment, services, and supplies required under this section. However,
 36 an employer may at any time permit an employee to have treatment for
 37 his injuries by spiritual means or prayer in lieu of the physician or
 38 surgeon and other medical services and supplies required under this
 39 section.

40 (d) If, because of an emergency, or because of the employer's failure
 41 to provide an attending physician or surgical, hospital, or nursing
 42 services and supplies, or treatment by spiritual means or prayer, as

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1 required by this section, or because of any other good reason, a
 2 physician other than that provided by the employer treats the injured
 3 employee during the period of the employee's temporary total
 4 disability, or necessary and proper surgical, hospital, or nursing
 5 services and supplies are procured within the period, the reasonable
 6 cost of those services and supplies shall, subject to the approval of the
 7 worker's compensation board, be paid by the employer.

8 (e) Regardless of when it occurs, where a compensable injury
 9 results in the amputation of a body part, the enucleation of an eye, or
 10 the loss of natural teeth, the employer shall furnish an appropriate
 11 artificial member, braces, and prosthodontics. The cost of repairs to or
 12 replacements for the artificial members, braces, or prosthodontics that
 13 result from a compensable injury pursuant to a prior award and are
 14 required due to either medical necessity or normal wear and tear,
 15 determined according to the employee's individual use, but not abuse,
 16 of the artificial member, braces, or prosthodontics, shall be paid from
 17 the second injury fund upon order or award of the worker's
 18 compensation board. The employee is not required to meet any other
 19 requirement for admission to the second injury fund.

20 (f) If an accident arising out of and in the course of employment
 21 after June 30, 1997, results in the loss of or damage to an artificial
 22 member, a brace, an implant, eyeglasses, prosthodontics, or other
 23 medically prescribed device, the employer shall repair the artificial
 24 member, brace, implant, eyeglasses, prosthodontics, or other medically
 25 prescribed device or furnish an identical or a reasonably equivalent
 26 replacement.

27 (g) This section may not be construed to prohibit an agreement
 28 between an employer and the employer's employees that has the
 29 approval of the board and that binds the parties to:

30 (1) medical care furnished by health care providers selected by
 31 agreement before or after injury; or

32 (2) the findings of a health care provider who was chosen by
 33 agreement.

34 SECTION 2. IC 22-3-3-6 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) After an injury and during the
 36 period of claimed resulting disability or impairment, the employee, if
 37 so requested by the employee's employer or ordered by the industrial
 38 board, shall submit to an examination at reasonable times and places
 39 by a duly qualified physician or surgeon designated and paid by the
 40 employer or by order of the worker's compensation board. The
 41 employee shall have the right to have present at any such examination
 42 any duly qualified physician or surgeon provided and paid for by the



1 employee. No fact communicated to, or otherwise learned by, any
 2 physician or surgeon who may have attended or examined the
 3 employee, or who may have been present at any examination, shall be
 4 privileged, either in the hearings provided for in IC 22-3-2 through
 5 IC 22-3-6, or in any action at law brought to recover damages against
 6 any employer who is subject to the compensation provisions of
 7 IC 22-3-2 through IC 22-3-6. If the employee refuses to submit to or in
 8 any way obstructs such examinations, the employee's right to
 9 compensation and his right to take or prosecute any proceedings under
 10 IC 22-3-2 through IC 22-3-6 shall be suspended until such refusal or
 11 obstruction ceases. No compensation shall at any time be payable for
 12 the period of suspension unless in the opinion of the worker's
 13 compensation board the circumstances justified the refusal or
 14 obstruction. The employee must be served with a notice setting forth
 15 the consequences of the refusal under this subsection. The notice must
 16 be in a form prescribed by the board.

17 (b) Any employer requesting an examination of any employee
 18 ~~residing within Indiana~~ shall pay, in advance of the time fixed for the
 19 examination, sufficient money to defray the necessary expenses of
 20 travel by the most convenient means to and from the place of
 21 examination, and the cost of meals and lodging necessary during the
 22 travel. If the method of travel is by automobile, the mileage rate to be
 23 paid by the employer shall be the rate currently being paid by the state
 24 to its employees under the state travel policies and procedures
 25 established by the department of administration and approved by the
 26 budget agency. **Mileage shall be computed from the location of the**
 27 **employer to the place of examination or from the home of the**
 28 **employee to the place of examination, whichever is less.** If such
 29 examination or travel to or from the place of examination causes ~~any~~
 30 **a** loss of working time on the part of the employee, the employer shall
 31 reimburse the employee for such loss of wages upon the basis of the
 32 employee's average daily wage. When any employee injured in Indiana
 33 moves outside Indiana, the travel expense and the cost of meals and
 34 lodging necessary during the travel payable under this section shall be
 35 paid from the point in Indiana nearest to the employee's then residence
 36 to the place of examination. ~~No travel and other expense shall be paid~~
 37 ~~for any travel and other expense required outside Indiana.~~

38 (c) A duly qualified physician or surgeon provided and paid for by
 39 the employee may be present at an examination if the employee so
 40 desires. In all cases where the examination is made by a physician or
 41 surgeon engaged by the employer and the injured employee has no
 42 physician or surgeon present at such examination, it shall be the duty



1 of the physician or surgeon making the examination to deliver to the
2 injured employee, or the employee's representative, a statement in
3 writing of the conditions evidenced by such examination. The
4 statement shall disclose all facts that are reported by such physician or
5 surgeon to the employer. Such statement shall be furnished to the
6 employee or the employee's representative, as soon as practicable, but
7 not later than thirty (30) days before the time the case is set for hearing.
8 The statement may be submitted by either party as evidence by that
9 physician or surgeon at a hearing before the worker's compensation
10 board if the statement meets the requirements of subsection (e). If such
11 physician or surgeon fails or refuses to furnish the employee or the
12 employee's representative with such statement thirty (30) days before
13 the hearing, then the statement may not be submitted as evidence, and
14 such physician or surgeon shall not be permitted to testify before the
15 worker's compensation board as to any facts learned in such
16 examination. All of the requirements of this subsection apply to all
17 subsequent examinations requested by the employer.

18 (d) In all cases where an examination of an employee is made by a
19 physician or surgeon engaged by the employee, and the employer has
20 no physician or surgeon present at such examination, it shall be the
21 duty of the physician or surgeon making the examination to deliver to
22 the employer or the employer's representative a statement in writing of
23 the conditions evidenced by such examination. The statement shall
24 disclose all facts that are reported by such physician or surgeon to the
25 employee. Such statement shall be furnished to the employer or the
26 employer's representative as soon as practicable, but not later than
27 thirty (30) days before the time the case is set for hearing. The
28 statement may be submitted by either party as evidence by that
29 physician or surgeon at a hearing before the worker's compensation
30 board if the statement meets the requirements of subsection (e). If such
31 physician or surgeon fails or refuses to furnish the employer, or the
32 employer's representative, with such statement thirty (30) days before
33 the hearing, then the statement may not be submitted as evidence, and
34 such physician or surgeon shall not be permitted to testify before the
35 industrial board as to any facts learned in such examination. All of the
36 requirements of this subsection apply to all subsequent examinations
37 made by a physician or surgeon engaged by the employee.

38 (e) All statements of physicians or surgeons required by this section,
39 whether those engaged by employee or employer, shall contain the
40 following information:

- 41 (1) The history of the injury, or claimed injury, as given by the
42 patient.



(2) The diagnosis of the physician or surgeon concerning the patient's physical or mental condition.

(3) The opinion of the physician or surgeon concerning the causal relationship, if any, between the injury and the patient's physical or mental condition, including the physician's or surgeon's reasons for the opinion.

(4) The opinion of the physician or surgeon concerning whether the injury or claimed injury resulted in a disability or impairment and, if so, the opinion of the physician or surgeon concerning the extent of the disability or impairment and the reasons for the opinion.

(5) The original signature of the physician or surgeon.

Notwithstanding any hearsay objection, the worker's compensation board shall admit into evidence a statement that meets the requirements of this subsection unless the statement is ruled inadmissible on other grounds.

(f) Delivery of any statement required by this section may be made to the attorney or agent of the employer or employee and such action shall be construed as delivery to the employer or employee.

(g) Any party may object to a statement on the basis that the statement does not meet the requirements of subsection (e). The objecting party must give written notice to the party providing the statement and specify the basis for the objection. Notice of the objection must be given no later than twenty (20) days before the hearing. Failure to object as provided in this subsection precludes any further objection as to the adequacy of the statement under subsection (e).

(h) The employer upon proper application, or the worker's compensation board, shall have the right in any case of death to require an autopsy at the expense of the party requesting the same. If, after a hearing, the worker's compensation board orders an autopsy and such autopsy is refused by the surviving spouse or next of kin, then any claim for compensation on account of such death shall be suspended and abated during such refusal. The surviving spouse or dependent must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board. No autopsy, except one performed by or on the authority or order of the coroner in the discharge of the coroner's duties, shall be held in any case by any person, without notice first being given to the surviving spouse or next of kin, if they reside in Indiana or their whereabouts can reasonably be ascertained, of the time and place thereof, and reasonable time and opportunity given such

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1 surviving spouse or next of kin to have a representative or
2 representatives present to witness same. However, if such notice is not
3 given, all evidence obtained by such autopsy shall be suppressed on
4 motion duly made to the worker's compensation board.

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